IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2033 OF 1992

Rajshree Shopping Centre
Coop.Housing Society & Anr. .. Petitioners

Versus

The Tahsildar, Thane & Ors. .. Respondents

Mr.Deepak R. More with Mr.Nighot for petitioners
Mr.P.M.Patil, A.G.P. for Respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 25TH OCTOBER 2004.

P.C.

1. Heard Advocates.

2. First petitioner is a cooperative housing society registered under the provisions of Maharashtra Cooperative Societies Act, 1960.

Second petitioner is a developer and builder. Second Petitioner has constructed a shopping complex on land bearing S.No.511/A Hissa I admeasuring about 1670 sq.mtrs. The plans for the said complex were sanctioned by Mira-Bhayander Gram Panchayat and after completion of building occupation certificate was also issued. The building consists of 144 tenaments, 72 residential and 72 commercial. Buyers of residential as well as commercial tenaments have formed the petitioner No.1 society.

2. It appears that the second petitioner has encroached upon Government land and portion of the building constructed by the second petitioner falls on the of Government land. A survey was conducted by the Tahsildar and it was revealed in the said survey that the developer has encroached upon Government land to the extent of 15 Ars. Therefore, a show cause notice was issued for demolition of the structure and eviction.

3. Mr.Nighot, learned Counsel appearing for the petitioners stated that petitioners have

submitted a proposal to the State Government offering an alternative land to State Government in lieu of the land which is said to be encroached upon by the petitioners and in the alternative, the petitioners are willing to pay market price of the said land. Mr.Nighot urged that if notice for eviction is enforced, it would cause serious hardship to the purchasers who have purchased the tenaments without knowledge of the ownership of Government. Therefore, he submitted that the Government should be directed to consider the proposal made by petitioners, sympathetically and regularise the construction. Learned A.G.P. has no serious objection to follow the course suggested by Mr.Nighot.

4. We direct the petitioners to make a fresh and exhaustive representation to the State Government within two weeks from today. State Government will consider the said representation and take appropriate decision within three months. In case Government takes an adverse decision it will not be implemented for a period of four weeks from the date of communication thereof to the petitioners.

5. Petition is accordingly disposed of.

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